

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

	)	
<b>BARBARA LODER HILDEBRANDT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. C-1-02 0003</b>
	)	
<b>HYATT CORPORATION, et al.</b>	)	<b>Judge Sandra Beckwith</b>
	)	
<b>Defendants.</b>	)	
	)	

**DEFENDANTS' MEMORANDUM OF LAW**  
**IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**  
**TABLE OF CONTENTS**

I.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
A.	Introduction.....	1
	Ohio Revised Code (“O.R.C.”) Chapter 4112	
	Age Discrimination in Employment Act, 29 U.S.C. §§ 621, <i>et seq.</i>	
	Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), <i>et seq.</i>	
B.	Plaintiff’s Employment With Hyatt. ....	3
C.	Hyatt’s National Sales Force.....	3
D.	Promotional Opportunities In The NSF.....	4
E.	Plaintiff’s Quota.....	10
F.	The Economic Downturn In 2001.....	10
G.	The 2001 Mid-Year Review.....	11
H.	Booth’s Alleged Gender And Age-Based Comments .....	13
I.	The Tragedy of September 11, 2002 And Its Effects On Hyatt’s Workforce .....	14
J.	The Reduction In Force In September 2001.....	15

K.	The Reassignment Of Plaintiff's Accounts .....	17
L.	Statistical Overview Of Hyatt's Workforce Before And After The Reduction In Force .....	18
M.	Summary Of Plaintiff's Claims .....	20
II.	LEGAL ANALYSIS AND ARGUMENT .....	21
A.	Summary Judgment Standard .....	21
	<i>Morris v. Oldham County Fiscal Court</i> , 201 F.3d 784 (6 <sup>th</sup> Cir. 2000)	
	<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	
	<i>Evans v. Jay Instrument and Specialty Co.</i> , 889 F. Supp 302 (S.D. Ohio 1995)	
	<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	
	<i>Hedberg v. Indiana Bell Telephone Co.</i> , 47 F.3d 928 (7 <sup>th</sup> Cir. 1995)	
	<i>Ruth v. Allis-Chalmers Corp.</i> , 1986 U.S. Dist. LEXIS 26531 (W.D. Ky. April 18, 1986)	
	<i>Harker v. Federal Land Bank of Louisville</i> , 679 S.W.2d 226 (Ky. 1984)	
	<i>Sublett v. Edgewood Universal Cabling Systems, Inc.</i> , 194 F. Supp. 2d 692 (S.D. Ohio 2001)	
B.	Plaintiff's Claims For Age And Gender Discrimination Against Hyatt Fail As A Matter Of Law.....	22
	<i>Irwin v. Marquette Medical Systems, Inc.</i> , 107 F. Supp 2d 974 (S.D. Ohio 2000)	
	<i>Plumbers &amp; Steamfitters Joint Apprenticeship Comm. v. Ohio Civil Rights Comm.</i> , 66 Ohio St. 2d 192, 421 N.E.2d 128 (1981)	
	<i>Genaro v. Central Transport, Inc.</i> , 84 Ohio St. 3d 293, 703 N.E.2d 782 (1999)	
1.	<u>Plaintiff Cannot Establish A Prima Facie Case Of Age Or Gender Discrimination Against Hyatt</u> .....	23
a.	<u>Applicable Burdens Of Proof For Age And Gender Discrimination</u> .....	23
	<i>Sublett v. Edgewood Universal Cabling Systems, Inc.</i> , 194 F. Supp. 2d 692 (S.D. Ohio 2001)	
	<i>Manzger v. Diamond Shamrock Chem. Co.</i> , 29 F. 3d 1078 (6 <sup>th</sup> Cir. 1994)	
	<i>Terbovitz v. Fiscal Court of Adair County</i> , 825 F.2d 111 (6 <sup>th</sup> Cir. 1997)	
	<i>Price Waterhouse v. Hopkins</i> , 490 U.S. 238 (1989)	
	<i>Kittle v. Cynocom Corp.</i> , 232 F. Supp. 2d 867 (S.D. Ohio 2002)	
	<i>Mauzy v. Kelly Services, Inc.</i> , 75 Ohio St. 3d 578, 664 N.E. 2d 1272 (1996)	
	<i>Creech v. The Ohio Casualty Ins. Co.</i> , 944 F. Supp. 1347 (S.D. Ohio 1996)	
	<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792 (1973)	

*Irwin v. Marquette Medical Systems, Inc.*, 107 F. Supp. 2d 974  
(S.D. Ohio 2000)  
*Rob v. Lakeshore Estates, Inc.*, 241 F.3d 491 (6<sup>th</sup> Cir. 2001)  
*Barnhart v. Pickerel, Schaeffer & Ebeling Co., L.P.A.*, 12 F.3d 1382  
(6<sup>th</sup> Cir. 1993)  
*Kline v. Tennessee Valley Auth.*, 128 F.3d 337 (6<sup>th</sup> Cir. 1997)

**b. Plaintiff Cannot Establish A Prima Facie Case  
Of Age Or Gender Discrimination Based On Hyatt's  
Alleged Failure To Promote Her To Certain Positions ..... 25**

*AMTRAK v. Morgan*, 536 U.S. 101, 120 S. Ct. 2061 (2002)  
*Rob v. Lakeshore Estates, Inc.*, 241 F.3d 491 (6<sup>th</sup> Cir. 2001)  
*Pritchard v. Office Max, Inc.*, 2000 U.S. App. LEXIS 437  
(6<sup>th</sup> Cir. January 6, 2000)  
*McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)  
*Betkerur v. Aultman Hosp. Ass'n.*, 78 F.3d 1079 (6<sup>th</sup> Cir. 1996)  
*Brown v. Tennessee*, 93 F.2d 00 (6<sup>th</sup> Cir. 1982)  
*Hines v. Ohio State University*, 3 F. Supp. 2d 859  
(S.D. Ohio 1998)  
*Dews v. A.B. Dick Co.*, 231 F.3d 1016 (6<sup>th</sup> Cir. 2000)  
*Donahoo v. Ohio Department of Youth Services*, 2002 U.S.  
Dist. LEXIS 23613 (N.D. Ohio August 26, 2002)  
*Frazier v. Ford Motor Co.*, 176 F. Supp. 2d 719  
(W.D. Ky. 2001)

**1) THE ASSOCIATE DIRECTOR OF SALES POSITION ..... 28**

*AMTRAK v. Morgan*, 536 U.S. 101, 120 S. Ct. 2061 (2002)  
*Hedberg v. Indiana Bell Telephone Co.*, 47 F.3d 928 (7<sup>th</sup> Cir. 1995)  
*Ruth v. Allis-Chalmers Corp.*, 1986 U.S. Dist. LEXIS 26531  
(W.D. Ky. April 18, 1986)

**2) THE ASSISTANT VICE PRESIDENT FOR  
INTERNATIONAL AND INDIVIDUAL  
TRAVEL POSITION ..... 29**

*AMTRAK v. Morgan*, 536 U.S. 101, 120 S. Ct. 2061 (2002)  
*Brown v. Tennessee*, 93 F.2d 600 (6<sup>th</sup> Cir. 1982)

**3) THE DIRECTOR OF SALES FOR THE CENTRAL  
NATIONAL SALES OFFICE POSITION ..... 31**

*Brown v. Tennessee*, 93 F.2d 600 (6<sup>th</sup> Cir. 1982)

**c. Plaintiff Cannot Establish A Prima Facie Case  
Of Age Or Gender Discrimination Based On**

***The Elimination Of Her Position During  
Hyatt's Reduction in Force ..... 32***

*Scott v. Goodyear Tire and Rubber Co.*, 160 F.3d 1121 (6<sup>th</sup> Cir. 1998)  
*Irwin v. Marquette Medical Systems, Inc.*, 107 F. Supp 2d 974  
 (S.D. Ohio 2000)  
*Evans v. Jay Instrument and Specialty Co.*, 889 F. Supp 302  
 (S.D. Ohio 1995)  
*Barnes v. GenCorp, Inc.*, 896 F.2d 1457 (6<sup>th</sup> Cir. 1990)  
*Herbst v. System One Information Management, L.L.C.*,  
 31 F. Supp. 2d 1025 (N.D. Ohio 1998)

**1) PLAINTIFF CAN PRESENT NO DIRECT EVIDENCE  
OF AGE OR GENDER DISCRIMINATION ..... 33**

*Terbovitz v. Fiscal Court of Adair County*, 825 F.2d 111  
 (6<sup>th</sup> Cir. 1997)  
*Creech v. The Ohio Casualty Insurance Co.*, 944 F. Supp. 1347  
 (S.D. Ohio 1996)  
*Bush v. Dictaphone Corp.*, 161 F.3d 363 (6<sup>th</sup> Cir. 1998)  
*Byrnes v. LCI Communication*, 77 Ohio St. 3d 125,  
 672 N.E.2d 145 (1996)

**2) PLAINTIFF CAN POINT TO NO CIRCUMSTANTIAL  
EVIDENCE DEMONSTRATING HER TERMINATION  
AS A RESULT OF THE REDUCTION IN FORCE WAS  
RELATED TO HER AGE OR GENDER..... 35**

*Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344 (6<sup>th</sup> Cir. 1998)  
*Mitchell v. Toledo Hosp.*, 964 F.2d 577 (6<sup>th</sup> Cir. 1992)  
*Hooper v. Cargill, Inc.*, 1999 U.S. App. LEXIS 17969  
 (6<sup>th</sup> Cir. July 23, 1999)  
*Trepka v. The Board of Education for the Cleveland City School Dist.*,  
 28 Fed. Appx. 455, 2002 U.S. App. LEXIS 1357 (6<sup>th</sup> Cir.  
 January 24, 2002)

**3) PLAINTIFF CAN POINT TO NO STATISTICAL  
EVIDENCE SUPPORTING HER CLAIMS..... 39**

*Barnes v. GenCorp, Inc.*, 896 F.2d 1457 (6<sup>th</sup> Cir. 1990)  
*Laugesen v. Anaconda Co.*, 510 F.2d 307 (6<sup>th</sup> Cir. 1975)  
*Adams v. Florida Power Corp.*, 255 F.3d 1322 (11<sup>th</sup> Cir. 2001)

**2. Even If Plaintiff Establishes A *Prima Facie* Case For Age  
And/Or Gender Discrimination, She Cannot Establish  
That Hyatt's Legitimate, Nondiscriminatory Reasons For**

**Her Discharge Or Allegedly Denied Promotions Were  
Pretext For Discrimination..... 40**

*Manzer v. Diamond Shamrock Chem. Co.*, 29 F. 3d 1078 (6<sup>th</sup> Cir. 1994)  
*Rob v. Lakeshore Estates, Inc.*, 241 F.3d 491 (6<sup>th</sup> Cir. 2001)  
*Herbst v. System One Information Management, L.L.C.*, 31 F. Supp. 2d 1025  
 (N.D. Ohio 1998)  
*Ruth v. Allis-Chalmers Corp.*, 1986 U.S. Dist. LEXIS 26531  
 (W.D. Ky. April 18, 1986)  
*Bush v. Dictaphone Corp.*, 161 F.3d 363 (6<sup>th</sup> Cir. 1998)  
*Betkerur v. Aultman Hosp. Ass'n.*, 78 F.3d 1079 (6<sup>th</sup> Cir. 1996)

a. ***There Is No Evidence Of Pretext In the  
Context Of Plaintiff's Allegations That She  
Was Not Promoted To Certain Positions..... 42***

b. ***There Is No Evidence Of Pretext In The Context  
Of The Elimination Of Plaintiff's Position ..... 44***

*Frantz v. Beechmont Pet Hosp.*, 117 Ohio App. 3d 351,  
 690 N.E.2d 987 (1996)  
*Herbst v. System One Information Management, L.L.C.*,  
 31 F. Supp. 2d 1025 (N.D. Ohio 1998)

C. **Plaintiff's Claims Against The Individual Defendants For  
Age And Gender Discrimination Fail As A Matter Of Law..... 45**

O.R.C. § 4112.01(A)(2)  
*Genaro v. Central Transport, Inc.*, 84 Ohio St. 3d 293, 703 N.E.2d 782 (1999)  
*Williams v. General Electric Co.*, 269 F. Supp. 2d 958, 970 (S.D. Ohio 2003)  
*Jones v. Kilbourne Medical Laboratories*, 162 F. Supp. 2d 813 (S.D. Ohio 2000)  
*Brown v. Worthington Steel, Inc.*, 211 F.R.D. 320 (S.D. Ohio 2002)

D. **Plaintiff's Claims Against Defendants For Discharge Based  
On A Violation Of Public Policy Should be Dismissed As  
A Matter Of Law..... 48**

*Wiles v. Medina Auto Parts*, 96 Ohio St. 3d 241 (2002)  
 O.R.C. § 4112.99  
*Rice v. CertainTeed Corp.*, 84 Ohio St. 3d 417, 704 N.E.2d 1217 (1999)  
*Barlowe v. AAAA Int'l Driving*, 2003 Ohio App. LEXIS 5097 (October 24, 2003)  
*Kittle v. Cynacom Corp.*, 232 F. Supp. 2d 867 (S.D. Ohio 2002)  
*Jones v. Kilbourne Med. Labs.*, 162 F. Supp. 2d 813 (S.D. Ohio 2000)

III. **CONCLUSION..... 50**